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# COMMONWEALTH OF VIRGINIA



## OFFICE OF THE GOVERNOR

### NUMBER TWELVE (2010)

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#### **Reissuance of Executive Order 110 (2010) Regarding Allocation of a Portion of the Commonwealth's Share of the Calendar Year 2009 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009**

#### **Importance of the Initiative**

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355) was enacted on February 17, 2009 ("ARRA"). Section 1521(a), Title I, Division B of ARRA added Section 54F to the Internal Revenue Code of 1986, as amended ("IRC"), to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that are designed to bear no interest and may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects").

IRC Section 54A(d)(2) requires that 100% of the sale proceeds of a QSCB and the investment earnings thereon (the "Available Project Proceeds") must be spent within three (3) years from the date of issuance of the QSCB (the "Expenditure Period") to pay the costs of Qualified Projects or issuance costs. To the extent less than 100% of the Available Project Proceeds are spent on such costs within the Expenditure Period, a pro rata portion of the QSCB is deemed to be a "nonqualified bond" under IRC Section 54A and the issuer is required to redeem the nonqualified bond within 90 days after the end of the Expenditure Period. The requirements described in this paragraph will be referred to collectively below as the "Expend-or-Redeem Requirement."

One of the conditions for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F(c) creates a national limitation of \$11 billion for each of calendar years 2009 and 2010. IRC Section 54F(d)(1) requires the U.S. Secretary of the Treasury to make allocations to the states in proportion to the respective amounts each state is eligible to receive

under Section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent federal fiscal year ending before the calendar year. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009) (the "Notice"), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is \$191,077,000 (the "2009 Commonwealth Share").

IRC Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to issuers within the state. The Notice provides that eligible issuers of QSCBs include states, political subdivisions as defined for purposes of IRC Section 103, large local educational agencies that are state or local governmental entities, certain "on-behalf-of" issuers and certain conduit financing issuers. Neither Virginia nor federal law provides any process for making allocations of the 2009 Commonwealth Share to eligible issuers.

From the \$191,077,000 2009 Commonwealth Share Executive Order 90 (2009) made a Volume Cap Allocation to the Virginia Public School Authority ("VPSA") in an amount sufficient to cover QSCBs to be issued by VPSA to finance certain qualifying projects in certain localities that were on the Literary Fund First Priority Waiting List approved by the Virginia Board of Education. On November 13, 2009, VPSA issued its \$61,120,000 School Tax Credit Bonds (Qualified School Construction Bonds), Series 2009-1 (the "2009 VPSA QSCBs"), pursuant to such Volume Cap Allocation. Since that time, additional net qualifying costs for the Lylburn Downing Middle School project in the City of Lexington have been identified and the Virginia Board of Education has added additional projects to the Literary Fund First Priority Waiting List (such additional projects, together with the Lylburn Downing Middle School project, will be referred to below as the "FPWL Projects"). The City of Lexington, together with the localities in which the other FPWL Projects are located, will be referred to below as the "FPWL Localities."

On October 14, 2009, Governor Kaine announced the availability of a portion of the 2009 Commonwealth Share remaining after the issuance of the 2009 VPSA QSCBs to local school divisions of certain localities through a competitive evaluation process to finance energy efficiency improvements and renovations, as well as renewable energy projects, for public school buildings. Working cooperatively, the Department of Education and Department of Mines, Minerals and Energy supervised an application process that concluded on November 12, 2009. Subsequently, each application and project was evaluated against criteria including annual energy savings, project payback period, shovel readiness, and composite index. The projects that were selected and the localities in which such projects are located will be referred to below respectively as the "Energy Projects" and the "Energy Project Localities" and, together with the FPWL Projects and the FPWL Localities, the "Awarded Projects" and the "Awarded Localities."

On January 13, 2010, Governor Kaine issued Executive Order 110 (2010) to allocate to VPSA pursuant to IRC Section 54F(d)(1) a portion of the 2009 Commonwealth Share sufficient for VPSA to issue a face amount of QSCBs at one time or from time to time to produce for each of the Awarded Projects listed therein an amount of net sale proceeds up to the maximum amount of the qualifying costs specified therein.

Since January 13, 2010, VPSA and this office have received a number of requests and comments from the Awarded Localities, their respective school divisions and other interested parties concerning Executive Order 110 (2010). Many of these requests have been for changes in the Awarded Projects and the allocations between Awarded Projects and many of the comments have

pointed out potential problems in satisfying the Expend-or-Redeem Requirement. In response to these requests and comments and by virtue of the powers invested in me by Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby reissue the previously-issued Executive Order 110 (2010) in the form of this order to amend and restate the Volume Cap Allocation to VPSA of a portion of the 2009 Commonwealth Share sufficient for VPSA to issue a face amount of QSCBs at one time or from time to time to produce for each of the Awarded Localities listed below an amount of net sale proceeds (the "Maximum Net Sale Proceeds") up to the maximum amount of specified for all of the Awarded Projects (in aggregate) of each Awarded Locality, which projects are the first priority use of the Maximum Net Sale Proceeds and the investment earnings thereon (the "Local Available Project Proceeds"). This order further (i) directs the Department of Education and the Department of Mines, Minerals and Energy to establish a procedure to ensure use of the Local Available Project Proceeds of each Awarded Locality on energy efficiency improvements and renovations, as well as renewable energy projects, for public school buildings within the Awarded Locality to the extent such proceeds are in excess of the amounts needed to complete all of the Awarded Projects of such Awarded Locality and (ii) establishes an expiration date for the Volume Cap Allocation made to VPSA pursuant hereto.

**The FPWL Localities and FPWL Projects:**

<b><u>Locality</u></b>	<b><u>Project</u></b>	<b><u>Maximum Net Sale Proceeds</u></b>
Virginia Beach City	Great Neck Middle School	\$7,500,000
Washington County	John Battle High School Abingdon High School Patrick Henry High School Holston High School Meadowview Elementary School Wallace Middle School Glade Spring Middle School William N. Neff Center	\$10,110,035
Hopewell City	Hopewell City High School	\$7,500,000
Virginia Beach City	College Park Elementary School	\$4,879,954
Lexington City	Lylburn Downing Middle School	\$1,500,000
Montgomery County	New Price's Fork Elementary School	\$7,500,000

**The Energy Projects  
and the Energy  
Project Localities:**

Amelia County	Amelia County Public Schools	\$1,205,379
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Arlington County	Arlington Career Center	\$3,331,022
Greene County	Greene County Technical Education Center Nathanael Greene Elementary School Ruckersville Elementary School William Monroe High School William Monroe Middle School	\$2,425,879
Greensville County	Belfield Elementary School Greensville County High School Wyatt Middle School Greensville Elementary School	\$746,104
Hampton City	Division Wide Lighting Upgrade Initiative	\$2,500,000
King William County	Acquinton Elementary School Hamilton Holmes Middle School King William High School Cool Spring Primary School	\$260,950
Lancaster County	Lancaster Middle School Lancaster High School	\$391,129
Lunenburg County	Central High School	\$1,172,948
Martinsville City	Martinsville Middle School Albert Harris Elementary School Patrick Henry Elementary School	\$1,050,749
Montgomery County	MCPS Energy Performance Contract	\$9,389,331
Prince William County	Hylton High School Benton Middle School Sudley Elementary School Marumsco Hills Elementary School West Gate Elementary School Vaughan Elementary School Swans Creek Elementary School Sinclair Elementary School Signal Hill Elementary School Potomac View Elementary School Parkside Middle School Occoquan Elementary School Neabsco Elementary School Minnieville Elementary School Kerrydale Elementary School Samuel L. Gravely, Jr. Elementary School	\$9,515,904

Glenkirk Elementary School  
 Gar-Field Senior High School  
 Fannie W. Fitzgerald Elementary School  
 Cedar Point Elementary School  
 Brentsville District High School  
 Bennett Elementary School  
 Belmont Elementary School  
 Bel Air Elementary School  
 Ashland Elementary School  
 Alvey Elementary school  
 Parkside Middle School  
 Tyler Elementary School  
 Yorkshire Elementary School  
 Gainesville Middle School  
 Woodbridge Senior High School  
 Woodbridge Middle School  
 Mary Williams Elementary School  
 Victory Elementary School  
 Sudley Elementary School  
 Stonewall Jackson High School  
 Rosa Parks Elementary School  
 Rockledge Elementary School  
 Osbourn Park High School  
 Marumsco Hills Elementary School  
 Marsteller Middle School  
 Leesylvania Elementary School  
 Godwin Middle School  
 Forest Park High School  
 Ellis Elementary School  
 Coles Elementary School  
 Bull Run Middle School  
 Buckland Mills Elementary School  
 Bristow Run Elementary School  
 Beville Middle School  
 Benton Middle School  
 Battlefield Middle School  
 Potomac Middle School  
 Freedom High School  
 Hylton High School  
 Stonewall Jackson High School  
 Osbourn Park High School  
 Gar-Field High School

Roanoke City

Preston Park Elementary School  
 Morningside Elementary School  
 Westside Elementary School  
 Monterey Elementary School

\$1,110,539

Shenandoah County	North Fork Middle School Peter Muhlenberg Middle School Central High School Signal Knob Middle School Sandy Hook Elementary School Ashby Lee Elementary School W. W. Robinson Elementary School Triplett Business and Technical Institute Strasburg High School Stonewall Jackson High School	\$7,302,996
Spotsylvania County	Courtland Elementary School Chancellor Elementary School Lee Hill Elementary School Salem Elementary School Battlefield Middle School Career and Technical Center Courtland High School Spotsylvania High School Massaponax High School Battlefield Elementary School Brock Road Elementary School Courthouse Road Elementary School Robert E. Lee Elementary School Smith Station Elementary School Courtland Elementary School Battlefield Middle School Chancellor Middle and High School Thornburg Middle School	\$2,581,293
Stafford County	Stafford County Public Schools Rockhill Elementary School	\$1,280,000
Virginia Beach City	College Park Elementary School	\$4,879,954
Washington County	Abingdon, Holston, Patrick Henry & John S. Battle High Schools	\$400,000
Westmoreland County	Washington & Lee High School	\$1,975,369
York County	Grafton-Bethel Elementary School HVAC Project	\$1,100,000

The Maximum Net Sale Proceeds are listed in the aggregate and the Local Available Project Proceeds attributable thereto must be used to finance one or more of the Awarded Projects listed for such Awarded Locality and at least completing the project work described in the approved project application for each Awarded Project undertaken; provided, however, that an Awarded Locality is not obligated to undertake each of the Awarded Projects listed for such Awarded

Locality. Each Awarded Locality may distribute its Local Available Project Proceeds among its Awarded Projects as the Awarded Locality deems to be in the best interest of the Awarded Locality.

The Department of Education and the Department of Mines, Minerals and Energy are to establish a procedure to ensure that the Local Available Project Proceeds are used to finance energy efficiency improvements and renovations, as well as renewable energy projects, for public school buildings within the Awarded Localities ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete all of the Awarded Projects. Such Additional Projects (i) must be Qualified Projects, (ii) must be able to utilize the unspent Local Available Project Proceeds within the relevant Expenditure Period and (iii) should be evaluated against the following criteria: annual energy savings, project payback period, shovel readiness, and composite index.

By September 1, 2010, VPSA shall provide to the Chief of Staff the completed Internal Revenue Service reporting form or forms (then in effect for the QSCBs) for those QSCBs issued pursuant to the Volume Cap Allocation made to VPSA pursuant to this order. Any portion of such Volume Cap Allocation not used by September 1, 2010 will be deemed waived by the VPSA and the pertinent Awarded Localities, and upon such waiver, the Commonwealth shall be authorized to re-allocate the waived Volume Cap Allocation in any reasonable manner as it shall determine in good faith and in its discretion.

I hereby authorize the Chief of Staff to provide certificates of compliance with IRC Section 54F(c) as may be requested by the VPSA.

**Effective Date of the Executive Order**

This Executive Order shall be effective as of June 10, 2010, without any further act or filing and shall remain in force and effect so long as IRC Section 54F shall remain in effect, unless sooner rescinded or amended by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of June, 2010.

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Robert F. McDonnell, Governor

Attest:

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Secretary of the Commonwealth